



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 14, 1998

Mr. James M. Heidelberg  
Schulman, Walheim & Heidelberg, Inc.  
112 East Pecan, Suite 3000  
San Antonio, Texas 78205-1528

OR98-3095

Dear Mr. Heidelberg:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120516.

The San Antonio Independent School District (the "school district") received a request for the following information:

The 1997/98, 1998/99 school year contracts of all administrative employees of S.A.I.S.D. who are defined in categories A, B, and C of the Compensation Plan in effect for the School District for said academic years 1997 through 1999 . . . . Request is further made for: 1) a work roster of all administrative personnel in said categories, together with their job titles and classifications, 2) number of credited years of experience, 3) salary, 4) daily rate of pay, 5) number of contracted school days per year.

You contend that the requested information is excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed a representative sample of the information at issue.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a) of the Government Code excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

You have submitted pleadings from a lawsuit currently pending against the school district in federal court. *Saltzman v. San Antonio Indep. Sch. Dist.*, Civil Action No. SA-95-CA-1131-EP (W.D. Tex., filed Nov. 13, 1995). You inform us that

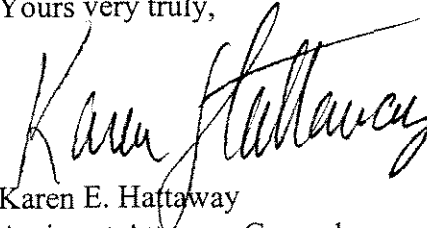
The Saltzman case is a consent class action brought pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act. The Plaintiff class currently consists of approximately 273 individual consent Plaintiffs who are current or former administrative, non-teaching employees of SAISD. The Plaintiffs allege that the Compensation Plans in effect and implemented within SAISD violate the Equal Pay Act, 29 U.S.C. § 206(d). SAISD's administrative employees are categorized within three classifications under the Compensation Plan: A, B, and C. SAISD has denied the allegations, asserting that SAISD's Compensation Plans constitute legitimate "factors other than sex" which are permissible under the Equal Pay Act.

Having carefully considered your arguments, we conclude that the requested information is related to the pending lawsuit. Therefore, the school district may withhold the information from disclosure pursuant to section 552.103(a). In reaching this conclusion, however, we assume that the opposing parties in the litigation have not previously had access to the information at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information at issue, there would be no justification for withholding that information from disclosure pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Karen Hattaway", written over a horizontal line.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 120516

Enclosures: Submitted documents

cc: Mr. Frederick J. Deyeso  
Attorney at Law  
110 Sprucewood Lane  
San Antonio, Texas 78216  
(w/o enclosures)